IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 13682 of 2006(D)

I.A.6041/03 IN OS.967/1999 of PRL.SUB COURT,THRISSUR

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PETITIONER:

SURYODAYAM CHITS AND FINANCE,
A PARTNERSHIP FIRM, REP. BY ITS MANAGING
PARTNER V.K.GOPI, AGED 52, S/O. KOCHUPAPPU,
VELLAMPARAMBIL HOUSE, OORAKAM VILLAGE DESOM,
THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

THE STATE OF KERALA, REP. BY THE
DISTRICT COLLECTOR, THRISSUR, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY GOVT.PLEADER SRI.THOMAS JOHN AMBOOKEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.13682/06

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF JUDGMENT IN O.S.967/99 DT.21.2.02 OF PRL. SUB COURT, THRISSUR.

EXT.P2 – TRUE COPY OF KURI SECURITY AGREEMENT EXECUTED BY DEFTS. IN FAVOUR OF PLAINTIFF DT.11.4.97

EXT.P3 – TRUE COPY OF COMMUNICATION ISSUED BY PRL. SUB COURT TO ADVOCATE FOR PETR. DT.1.10.03.

EXT.P4 – TRUE COPY OF REVIEW APPLICATION I.A.6041/03 IN O.S.967/99 DT.28.10.03 OF PRL. SUB COURT, THRISSUR.'

EXT.P5 – TRUE COPY OF OBJECTIONS SUBMITTED BY RESPONDENTS TO EXT.P4.

EXT.P6 – TRUE COPY OF ORDER PASSED BY SUB COURT IN EXT.P4 I.A.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.13682 OF 2006

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DATED THIS THE 29TH JUNE, 2007

J U D G M E N T

Ext.P2 kuri security agreement was marked in evidence in a suit for recovery of money filed by the writ petitioner, a chitty Foreman without any objection from any quarter. About two years thereafter, the petitioner is served with Ext.P3 communication by the learned Sub Judge directing the petitioner to remit a sum of Rs.63,800/- towards stamp duty and penalty on the document. When Ext.P3 communication was received, the petitioner filed an application for review before the learned Sub Judge which was dismissed by Ext.P6 order, taking the view that the order impounding the document and directing the petitioner to pay deficit stamp duty and penalty has been passed by the learned Judge on the administrative side and therefore the same is not liable to be reviewed under Order XLVII Rule 1 C.P.C. Technically, the learned Sub Judge may be right. But considerations of justice demand that the learned Sub Judge shall hear the petitioner also before he passes an order impounding the document which had been marked in evidence without any objection from any quarter. It is doubtful whether construction of Ext.P2 as a bond is correct, in view of various pronouncements of this Court including **Little Flower Kuries**

and Enterprises Ltd. v. Victory (1979 KLT 820) and **Mathai Mathew v. Thampi** (1989 (1) KLT 138).

2. I set aside Exts.P3 and P6 and direct the learned Sub Judge to take a fresh decision on the question whether Ext.P2 document is liable to be termed as a bond and whether the petitioner is liable for payment of deficit stamp duty and penalty, after hearing the petitioner. Fresh decision as directed above will be taken at the earliest and at any rate within three months of receiving copy of this judgment.

The Writ Petition is allowed as above.

(PIUS C.KURIAKOSE, JUDGE)

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